

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Denial of the
Application of Venus Jandert for a
License to Provide Child Care

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on July 27, 2004 at the Grant County Courthouse, 10 Second Street NE, Elbow Lake, Minnesota. The OAH record closed at the end of the hearing.

Lyndon L. Kratochwill, Grant County Attorney, 18 East Division Street, PO Box 1014, Elbow Lake, Minnesota 56531-1014, appeared on behalf of the Grant County Social Services Department and the Department of Human Services.

Venus M. Jandert, 15777—217th Street, Barrett, Minnesota 56311, appeared for herself without counsel.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUE

Did the Department properly conclude that Ms. Jandert should not be issued a license to provide child care because a person living in her home is disqualified?

The Administrative Law Judge concludes that because Ms. Jandert's son is disqualified, the Department of Human Services properly denied her license application.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Venus Jandert lives in Barrett, Minnesota, with her four-year-old daughter; her 19-year-old son; and her 26-year-old daughter and six-year-old grandchild. In the past, Ms. Jandert has been a licensed child care provider in Hennepin County.

2. In March 2001, when Jandert's son was 16 years old, he had a dispute with an instructor at school that involved verbally threatening language. He was charged in juvenile court with a felony offense of making terroristic threats in violation of Minn. Stat. § 609.713. On May 21, 2001, the charge was reduced to misdemeanor assault in violation of Minn. Stat. § 609.224. Jandert's son was not, however, adjudicated delinquent; the adjudication of delinquency was stayed for six months, and the charge was dismissed thereafter when he completed counseling and a term of probation.^[1]

3. In early April 2002 Venus Jandert submitted an application to Grant County Human Services for a license to provide family day care.^[2] The licensing case aide returned the application for more complete information, and Ms. Jandert resubmitted the completed application on April 26, 2002.^[3]

4. In November 2002 Ms. Jandert submitted completed background study consent forms for persons residing in her home.^[4]

5. In January 2003 the licensing case aide obtained background information concerning the March 2001 incident involving Jandert's son. After reviewing police reports, the delinquency petition, the stay of adjudication, and other written materials, the case aide determined that a preponderance of the evidence supported the conclusion that the son had committed the felony offense of making terroristic threats. The case aide concluded that Jandert's son was disqualified from access to children in day care, and she sent him a notice of disqualification. The son did not request reconsideration of the disqualification.

6. On November 20, 2003, the case aide recommended to the Department of Human Services that Ms. Jandert's license application be denied on the basis of the son's disqualification.^[5]

7. On April 8, 2004, the Department issued an order denying the application.^[6]

8. Ms. Jandert filed a timely request for appeal.^[7]

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter under Minn. Stat. § § 14.50 and 245A.08.

2. The Department of Human Services gave proper and timely notice of the hearing in this matter.

3. The Department and Grant County have complied with all substantive and procedural requirements of law and rule.

4. At a hearing on denial of an application, the applicant bears the burden of proof to demonstrate by a preponderance of the evidence that the appellant has complied fully with this chapter and other applicable law or rule and that the application should be approved and a license granted.^[8]

5. An applicant shall not be issued a license if the applicant or any other person living in the day care residence has a disqualification under Minn. Stat. § 245C.14.^[9]

6. The commissioner shall disqualify an individual from a position allowing direct contact with persons receiving services from the license holder when a background study shows conviction of or admission to one or more crimes listed in Minn. Stat. § 245C.15, or when a preponderance of the evidence indicates the individual has committed an act or acts that meet the definition of any of the listed crimes.^[10]

7. A person living in a day care residence who is disqualified from direct contact is also disqualified from access to children in care.^[11]

8. An individual who has received a felony conviction for making terroristic threats in violation of Minn. Stat. § 609.713 or a misdemeanor conviction for fifth-degree assault in violation of § 609.224 is disqualified if less than 15 years or seven years have passed, respectively.^[12]

9. For licensing purposes, a finding that a delinquency petition is proven in juvenile court shall be considered a conviction in state district court.^[13]

10. The applicant's son does not have a felony conviction, a misdemeanor conviction, or a juvenile court adjudication of delinquency based on violation of the above statutes.

11. The Grant County Department of Human Services made a determination that a preponderance of the evidence indicates that the applicant's son committed the felony offense of making terroristic threats, and the applicant's son did not seek reconsideration of this determination.

12. Because the applicant's son resides in her home and is disqualified, the Department of Human Services properly denied the applicant's request for a license.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the order denying Ms. Jandert a license to provide child care on the basis of her son's disqualification be affirmed.

Dated this 3rd day of August, 2004.

/s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Taped (one tape)

MEMORANDUM

Minn. Stat. § 245C.26 provides that if an individual other than the applicant commits an act constituting a ground for disqualification, the applicant may seek reconsideration when the individual who committed the act no longer resides in the home. Venus Jandert testified that her son has completed high school and plans to move to Florida in the next month. When he no longer resides in her home, she will be entitled to seek reconsideration pursuant to § 245C.26.

K.D.S.

^[1] Testimony of Christine Monk, Venus Jandert.

^[2] Ex. 1.

^[3] Testimony of Christine Monk.

^[4] *Id.*

^[5] Testimony of Christine Monk.

^[6] Ex. 2.

^[7] Testimony of Christine Monk.

^[8] Minn. Stat. § 245A.08, subd. 3(b).

^[9] Minn. R. 9502.0335, subp. 6D.

^[10] Minn. Stat. 245C.14, subd. 1(a)(1), (2).

^[11] *Id.* § 245C.14, subd. 2(a)

^[12] *Id.* § 245C.15, subd. 2(a); *id.*, subd. 4.

^[13] *Id.* § 245C.08, subd. 4(d).